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entity, which seems more in accord with both reason and authority, no deduction should be made in the amount recovered, for the plaintiff is not then a defendant. An additional difficulty in the decision rendered lies in the fact that if the union has done nothing, and if there is no legal right against it, an injunction such as appears to have issued is not easily supported.

RECENT CASES

ADMIRALTY — JURISDICTION — VESSEL REQUISITIONED BY FOREIGN GOVERNMENT RELEASED ON OWNER'S BOND. — A vessel was libeled, and released on the owner's bond. Thereafter the United States Attorney suggested to the court that the ship had previously been requisitioned by the Italian government, and was engaged in government business. *Held*, that the attachment would not be quashed nor the bond canceled. *Barnes-Ames Co.* v. *S. S. Luigi*, 73 Leg. Int. 141 (U. S. Dist. Ct.)

It is well established that the vessels of a foreign government devoted to a public use are not liable to arrest. *The Parlement Belge*, 5 P. D. 197. See 17 HARV. L. REV. 270. Here the Italian government by the requisition seems to have acquired a prior lien on the vessel. Accordingly the court should have refused the order for attachment if it had known the facts, not because of any defense of the owner, but out of respect to the interests of the government, an objection to the proceeding which from the owner's standpoint was purely accidental. But by the release of a ship on bond, the latter is substituted for the former, and the authority of the court over the vessel entirely ceases. *The Old Concord*, 18 Fed. Cas., No. 10,482. See *The Frank Vanderkerchen*, 87 Fed. 763, 765. See BENEDICT, ADMIRALTY, 4 ed., § 421. Thus after the release, the interests of the government in the ship are no longer under the authority of the court, but only the owner's bond, in which the government has no interest. Therefore no objection remains to letting the action proceed, since the court will not be exercising jurisdiction over any property of the government. In a similar case, where the bond was given by the agent of the owning government, the action was dismissed. *The Jassy*, [1906] P. 270. But there the government was interested in the bond as well as in the ship, and would have been impleaded had the action proceeded. And it is a settled principle of international law that no sovereign can be impleaded in any court. See *The Parlement Belge*, *supra*, 219.

BANKRUPTCY — JURISDICTION — IS A DEPOSIT IN A LOCAL BANK PROPERTY WITHIN THE JURISDICTION? — Section 2 (1) of the Bankruptcy Act provides that the federal courts shall have jurisdiction to adjudge persons bankrupt who have property within the jurisdiction. The defendant committed an act of bankruptcy in England, where he was resident. He had money deposited in a bank in New York, but no other property there. A petition is brought in New York within four months. *Held*, that the New York court has jurisdiction to adjudicate him a bankrupt. *In re Berthoud*, 54 N. Y. L. J. 2321 (U. S. Dist. Ct., S. Dist. N. Y.).

A bank deposit of a bankrupt is clearly property within the act in the sense that it passes to his trustee. *Cf. New York County Nat. Bank* v. *Massey*, 192 U. S. 138. It is evident, therefore, that it is sufficient to support bankruptcy proceedings if its *situs* is in the jurisdiction. Since an intangible *chose* can of course have no location in fact, its *situs* must be that place having such power to control it as the relief sought demands. See *Matter of Houdayer*,

150 N. Y. 37, 41, 44 N. E. 718, 719. Since the requisite control in bankruptcy is power to pass the benefit of the claim from the defendant to a third person, it would seem that jurisdiction over both defendant and debtor is necessary; or at least over the debtor and the place of payment. See BEALE, CASES ON CONFLICTS OF LAWS, SUMMARY, § 38. In the analogous case of garnishment, a few cases have recognized this. *Louisville & Nashville R. Co.* v. *Nash*, 118 Ala. 477, 23 So. 825; *Sawyer* v. *Thompson*, 24 N. H. 510. See BROWN, JURISDICTION, 2 ed., § 150; *cf. Comm. Nat. Bank* v. *Chicago, etc. Ry. Co.*, 45 Wis. 172. The great weight of authority, however, disregards this principle. *Cf. Chicago, etc. Ry. Co.* v. *Sturm*, 174 U. S. 710; *Swedish-American Nat. Bank* v. *Bleeker*, 72 Minn. 383, 75 N. W. 740; *Sexton* v. *Phœnix Ins. Co.*, 132 N. C. 1, 43 S. E. 479; *National Fire Ins. Co.* v. *Chambers*, 53 N. J. Eq. 468, 32 Atl. 663. The case of a bank deposit seems relatively clear, since the *situs* of the debtor and the place of payment necessarily concur. Accordingly, the debt has been held to exist at the *situs* of the bank. *McBee* v. *Purcell Nat. Bank*, 1 Indian Terr. 288, 37 S. W. 55. Moreover, it seems that the courts are tending to adopt the mercantile conception of a bank deposit as the equivalent to cash. See *Blackstone* v. *Miller*, 188 U. S. 189, 205. *Matter of Houdayer*, 150 N. Y. 37, 40, 44 N. E. 718, 719. See 24 HARV. L. REV. 586. Upon sound principle, therefore, as well as upon the spirit of the Bankruptcy Act, which calls for distribution of the property of an insolvent wherever it is practically available, the result reached by the court in the present case is a desirable one.

BANKRUPTCY — PREFERENCES — EFFECT OF ENFORCEMENT OF TRANSFER. — Within four months before the filing of a petition in bankruptcy, an insolvent debtor paid in full a personal creditor who had actual knowledge of the debtor's circumstances. Though liable for certain partnership debts, the insolvent then had no other individual debts outstanding. However, by the time the petition was filed there were other individual creditors, who could not be paid in full. The trustee seeks to avoid the transfer as a preference. *Held*, that the transfer may be set aside. *Rubenstein* v. *Lottow*, 111 N. E. 973 (Mass.).

Since a preference includes only transfers giving one creditor an advantage over other "creditors of the same class," no preference was effected at the time of the transfer, for partnership creditors and individual creditors are not "creditors of the same class." See BANKRUPTCY ACT OF 1898, §§ 60 *a*, 5 *f*; *Mills* v. *J. H. Fisher & Co.*, 159 Fed. 897, 900; *In re Denning*, 114 Fed. 219, 221; *cf. Swarts* v. *Fourth National Bank*, 117 Fed. 1, 6. The principal case therefore decides squarely that if the enforcement of the transfer effects a preference as of the date of the petition, it may be set aside. This seems to be the natural inference from the requirement in section 60 *a*, that a transfer made by an insolvent debtor within four months of bankruptcy shall be deemed to be a preference if "the effect of the enforcement of such . . . transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class." But this is difficult to reconcile with the provision in section 60 *b*, that a transfer shall be voidable if (*inter alia*) "at the time of the transfer . . . the . . . transfer then operate as a preference." However, by treating the word "preference" as strictly relative to the definition in section 60 *a*, it is possible to construe section 60 *b* as making voidable only transfers which when given operate to produce a situation that at the time of bankruptcy will give one creditor an advantage over others. This construction is in harmony with the general policy of the bankruptcy act to determine all questions in so far as possible with reference to the conditions existing when the petition is filed. *Cf. Bailey* v. *Baker Ice Machine Co.*, 36 Sup. Ct. 50, 54; *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 307. Any other construction would involve the great practical difficulty of computing of percentages at the date of every transfer within the four months' period. It would also lead